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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

MARIA N.,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

B177350

(Super. Ct. No. CK 51384)

ORIGINAL PROCEEDING; petition for writ of mandate. Anthony Trendacosta,
Juvenile Court Referee. Petition denied.

Robert N. Jacobs for Petitioner.

No appearance for Respondent.

Larry Cory, Assistant County Counsel, and Jerry M. Custis, Senior Deputy County
Counsel, for Real Party in Interest.

Petitioner, Maria N., filed a petition for extraordinary relief under California Rules of Court, rule 39.1B, seeking review of the juvenile court's August 13, 2004 order terminating family reunification services and setting a selection and implementation hearing under Welfare and Institutions Code section 366.26¹ to determine the best permanent plan for her three children. We conclude that substantial evidence supports the order terminating reunification services and setting the section 366.26 hearing. Accordingly, we deny the petition.

I. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is the mother of Genaro C. (born July 1996), Lupita N. (born November 1998) and Alondra N. (born April 2002).² On February 10, 2003, the Los Angeles County Department of Children and Family Services (DCFS) filed a dependency petition on behalf of the children alleging that petitioner's male companion, Pedro B., hit petitioner about the face during episodes of domestic violence, and that he physically abused the children by striking them with a belt. It was also alleged that Pedro B. sexually molested Lupita by digitally penetrating her vagina with his fingers while holding his hand over her mouth, and that he told Genaro he would cut off his testicles if he told anyone about it. It was further alleged that petitioner was unable to protect the children from the abuse, and that this endangered their physical and emotional health and safety.

A detention hearing was held on February 10, 2003. In a report prepared for the hearing, DCFS advised that petitioner had been living in Solano County in her brother's home until he put her and the children out. She began living in motels and shelters. She knew little about Pedro B., including his last name. She began living with him on the day she met him, and had lived with him for about a year. When petitioner asked Pedro B. whether he had molested Lupita, he admitted the molestation and told petitioner there was

¹ Unless otherwise noted, all further statutory references are to the Welfare and Institutions Code.

² The three children have different fathers. All left petitioner when she became pregnant or when the children were born. Only one has had contact with his child. None of the fathers are parties to this petition.

nothing she could do about it. Instead of calling the police, petitioner took Lupita for medical treatment. A hospital worker who examined Lupita called the police and all three children were detained. When questioned, Genaro described the molestation and Pedro B.'s threat to cut off his testicles if he told anyone what he had done. Genaro stated he was worried about his sister because Pedro B. had very dirty hands and feet. When detained, Lupita had some bruises on her lower back and legs. All three children had a skin infection, were extremely dirty and wearing dirty clothes. The children appeared to be very hungry. The social worker noted that petitioner "appeared to be somewhat developmentally delayed," and appeared "to have difficulty caring and providing for herself without subjecting herself and her children to strangers who are prone to take advantage [of] or harm them."

The juvenile court found that a prima facie case for detaining the children had been established, and ordered the children detained in shelter care. DCFS was directed to provide petitioner with family reunification services. Petitioner's visitation was to be monitored by a DCFS-approved monitor.

An adjudication hearing was held on April 4, 2003. In reports prepared for the hearing, DCFS advised that Solano County child welfare authorities had received nine referrals over the prior four years alleging petitioner's neglect, absence and abuse. Petitioner advised the social worker that she had been born in Mexico, had never attended school, and was living in this country illegally. In March 2003, the children were placed in the same foster home, and had been referred to the regional center for evaluation and services.

Petitioner pleaded no contest to a dependency petition that alleged Pedro's physical and sexual abuse of the children, his threat to harm Genaro, his striking petitioner in front of Genaro and petitioner's inability to protect the children. The juvenile court sustained the allegations pursuant to section 300, subdivisions (a), (b) and (d).

On April 25, 2003, a disposition hearing was held. In a report prepared for the hearing, the social worker advised that she had enrolled petitioner in a sex abuse awareness program, a battered women's group and individual therapy.

The juvenile court declared the children dependents of the court. The court found that petitioner was in partial compliance with the case plan. The court ordered a family reunification plan for petitioner consisting of individual counseling, including regional center evaluation for petitioner and the children, sexual abuse counseling for the children and petitioner and enrollment by petitioner in a battered women's program if available. Petitioner signed the plan. DCFS was directed to "follow up regarding regional center services for" petitioner.

A section 366.21, subdivision (e), hearing was held on October 24, 2003. In a report prepared for the hearing, DCFS reported that the children were safe and comfortable in their foster home and had improved tremendously in all areas. Although petitioner had been complying with the court-ordered case plan, the social worker cautioned that petitioner was "not in any way" ready to assume custody of the children. On several occasions, petitioner made inappropriate comments to the children during visits, which caused the foster parents to intervene. In October 2003, she met a stranger on a bus and brought him with her to visit the children. Petitioner had moved on three occasions in recent months, and had unexpectedly married a man she had met on the street while looking for a place to live. She had known him only a short period of time. The social worker noted that petitioner had a history of moving in with men shortly after meeting them, and that this "irresponsibility" on petitioner's part had caused her children to be abused by strangers. According to the social worker, petitioner had "not yet fully understood the importance of not having strangers come in and out of her life and home," and that although petitioner's therapist and parenting instructor had "continuously" worked with petitioner on making better judgments and decisions, they had "not yet fully gotten through to her."

The DCFS social worker had referred petitioner for regional center services in Los Angeles County. In July 2003, the social worker received a call from a service worker

employed by the North Bay Regional Center in Northern California where petitioner had received services. The service worker stated she was “very happy” the children had been removed from petitioner’s custody. The service worker did not believe petitioner was capable of caring for her children on her own, and believed that petitioner had left Solano County because she knew the children were going to be removed from her care. Petitioner left Solano County on the day she was supposed to meet with Child Protective Services. At the conclusion of the section 366.21, subdivision (e) hearing, the juvenile court ordered petitioner’s visits to be unmonitored at least once a week in a neutral setting.

A section 366.26, subdivision (f) hearing was held on June 7, 2004. Attached to a report prepared for the hearing was a psychological evaluation which revealed that petitioner could not read, had no concept of the value of money and was “mildly mentally retarded.” Although the psychologist noticed a loving relationship between petitioner and her children, he believed that petitioner would need “close supervision in caring for her children.” Petitioner was being provided regional center services, including an independent living skills worker who met with petitioner once a week to assist petitioner in learning the skills necessary to reunify with her children. The goal was to help petitioner in socialization, recognizing medical and nutritional needs, developing assertiveness, establishing personal boundaries, budgeting, managing money and securing permanent housing. The social worker advised that although petitioner had complied with the case plan, she was not ready to reunify with the children. As of the date of the 12-month hearing, petitioner had not yet progressed to overnight visits or visits longer than three hours. The foster mother reported that on one occasion the children and petitioner were in the foster mother’s car to be dropped off for an unmonitored visit. The foster mother told petitioner to put her seat belt on and she refused. After the visit, the foster mother had difficulty convincing the children to remain in their seats and keep their seat belts on. The foster mother believed this occurred due to petitioner’s refusal to put her seat belt on. The social worker advised that petitioner kept bringing spoiled food to the visits and that as a result, the children had gotten sick with stomach pains, diarrhea and vomiting. Petitioner had a history

of involving her children with food poisoning and on one occasion Alondra had to be rushed to the hospital. The social worker indicated that petitioner “seem[ed] to experience a difficult time in properly caring for her children and [got] overwhelmed when she [had] them for long periods of time.” The social worker concluded: “Sadly, [the social worker] has also yet to see [petitioner] really improve her parenting skills/knowledge since the detention of her children on 02/2003. [Petitioner] continues to go through the motions but has yet to put the tools that were given to her through her Court ordered program to work. . . . [Petitioner] may always continue to struggle and get overwhelmed in caring for her children, and hence placing them in danger without continual supervision and support. While petitioner meant well, she had no plan on how to avoid repeating the past events in which she placed her children in dangerous circumstances. The social worker and petitioner’s regional center worker agreed that the children should not be released to her. The children’s foster parents said they wanted to adopt the children.

The juvenile court set a section 366.22 hearing for July 27, 2004, and directed DCFS to serve its report for that hearing on all parties 10 days before the hearing. The court ordered that the report was to include reports from the regional center workers for petitioner and the children. Petitioner’s husband, Mr. A., was to be interviewed and subjected to a live scan check.

Petitioner and her attorney appeared in court for the July 27, 2004 hearing. The juvenile court found that notice of the proceedings had been given to all appropriate parties as required by law. DCFS filed a status review report for the July 27, 2004 hearing, which the juvenile court indicated that it had read and considered. The record does not contain a proof of service showing that the report was served on either petitioner or her attorney. The section 366.22 hearing was continued to August 13, 2004, because petitioner asked for a contested hearing.

A section 366.22 hearing was held on August 13, 2004. During the hearing, the court clarified that the report prepared for the July 27, 2004 hearing had been read by counsel for

the parties.³ Contained within the report was the information that petitioner's new husband had failed to undergo a live scan check, as he was asked. Petitioner apparently did not know her husband's full name. She had said he would be moving out of their apartment, calling him her ex-husband. But in testimony at the hearing, the husband said he and petitioner got along very well and gave no sign they intended to separate.

Although petitioner had complied with the court orders and the case plan, petitioner's regional center worker still believed petitioner was not ready to take care of the children, a view shared by the social worker. Petitioner continued to have problems during unmonitored visits with her children. She still had not had her children for overnight visits or for visits for more than three hours at a time. Petitioner lived in a very small apartment and used a burner to cook meals.

The social worker had spoken to a number of petitioner's family members who resided in Northern California and her former regional center worker. All advised that petitioner had placed her children in very difficult and dangerous circumstances. The social worker advised that "[i]f not for these relatives who constantly helped [petitioner] supervise her children, who knows in what dangerous or potentially life threatening situations these kids would find themselves in the supervision of their mother. [¶] Unfortunately, [petitioner] for many years brought several problems to her family members because of her promiscuous tendencies, irresponsibility, and leaving her children unsupervised." As a result, petitioner's family was no longer willing to help her or even baby sit for her.

³ During the hearing, the court asked, "did we ever resolve the issue of that last report? Has everybody read it?" Counsel for DCFS replied, "Yes. I don't object to it coming in." The court then stated, "All right. That would be mother's next in order." The court then asked petitioner's counsel, "[d]id you submit that?" Petitioner's counsel then stated, "[t]hank you, Your Honor. I can't remember where I put it, but I'll try to find it. [¶] Do I have it?" Counsel for the minors stated, "Yes, I gave it back to you. It's the 12th of July." At another point during the hearing, the court referred to the July 27, 2004 report when the court advised petitioner's counsel that petitioner's new husband had not "live scanned." Petitioner's counsel, referring to the report as "Exhibit 6," argued that although the report may indicate that no live scan had been performed, petitioner's husband "doesn't refuse it."

According to the social worker, petitioner's difficulties were particularly significant because of "her three young and complex children who all require a tremendous amount of attention and support because of their individual disabilities." For example, Lupita often fell and needed help with showering, hygiene and dressing. She lacked any concept of safety and approached strangers if not supervised. Her eating had to be supervised, as she did not know when to stop eating and chewed on such objects as crayons and pieces of rug.

The children had all improved tremendously while in the care of their foster parents. The foster parents told the social worker that they wanted to provide the children with a permanent home. They intended to move to Northern California, and wanted the children to move with them. Petitioner knew about these plans, and told the social worker that if she could not reunify with her children, she wanted them to remain with their foster parents. Petitioner told the foster mother that she, too, would move to Northern California so that she could continue visiting with the children. The attorneys for the three children opposed placing them in petitioner's custody. The social worker concluded that "release [of the children] to [petitioner] will cause [petitioner] to be overwhelmed and not be able to follow through with the appropriate services and care for her children."

Having heard petitioner testify, the court explained as follows: "She doesn't appear to me to be able to grasp complex issues. She had problems in determining what day of the week we were talking about. She had problems in focusing on the questions that were being asked of her, unable to comprehend some of the most basic questions that were being asked of her [¶] We also have the evidence with respect to the fact that Ms. Sanchez [petitioner's regional center individual living counselor] talked about food preparation and yet . . . we've had food spoiling incidents over the last couple of months which raise concerns, especially in light of the situation in which you're talking about three children, I think seven, five, and three, with a mother who is receiving services to be able to organize her own life. We're now going to be asking her to organize the lives of three very, very difficult children who have special needs."

The juvenile court found that DCFS had provided reasonable reunification services, that petitioner had complied with the case plan, and that return of the children to petitioner's physical custody would create a substantial risk of detriment to the physical and emotional well-being of the children. DCFS was directed to provide petitioner and the children with permanent placement services. The court terminated reunification services and set a section 366.26 hearing.

II. CONTENTIONS

Petitioner contends DCFS failed to provide her with adequate reunification services, and that notice of the section 366.26 hearing was defective.

DISCUSSION

A. Substantial evidence supports the juvenile court's finding that reasonable reunification services were provided.

Petitioner contends the evidence is insufficient to support the juvenile court's finding that reasonable services were provided. On review, all reasonable inferences and evidentiary conflicts are resolved in favor of the juvenile court's findings. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) The parent bears the burden of showing there is insufficient evidence to support the ruling. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.) "If there is any substantial evidence to support the findings of a juvenile court, a reviewing court is without power to weigh or evaluate the findings." (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1361-1362.) "[I]n reviewing the reasonableness of the reunification services provided by DCFS, we must also recognize that in most cases more services might have been provided, and the services which are provided are often imperfect. The standard is not whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances. [Citation.]" (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.)

The fact that a parent completes the steps called for in a case plan does not automatically demonstrate that the parent has the ability to take custody of his or her

children. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1143 [parent's compliance with case plan does not guarantee return of children's custody].)

Substantial evidence supports the juvenile court's finding that adequate services were provided to petitioner. DCFS provided petitioner with referrals to all services needed under the case plan, and enrolled her in most of them. Although petitioner completed all the steps called for in the case plan, petitioner never attained the ability to adequately protect her children.

Petitioner never advised DCFS that she needed further services. Nor does she state in what way the reunification services provided by DCFS were inadequate. She merely alleges, in conclusory fashion, that DCFS failed to consider her special needs in implementing an appropriate case plan and did not offer services that were reasonable or sufficient to accomplish family reunification. Petitioner does not state what was missing, or show that she raised the matter in the juvenile court. (*In re Richard K.* (1994) 25 Cal.App.4th 580, 590 [party is precluded from raising on appeal any point not raised in the trial court].)

B. Petitioner received adequate notice of the section 366.26 hearing.

Petitioner claims that notice and service were inadequate because a report concerning her was not included in the July 27, 2004 status review report. Petitioner is mistaken. A review of the July 27, 2004 report shows that it contains a report as to her.

Petitioner next complains that she and her attorney were not served with a copy of the July 27, 2004 social worker's report. Even if true, the record reflects that the July 27, 2004 hearing was continued to August 13, 2004, for a contested section 366.22 hearing, and that petitioner's counsel had the status review report prepared for the July 27, 2004 hearing at least 10 days prior to the August 13, 2004 hearing.

Petitioner also complains that her attorney was not served with notice of the July 27, 2004 hearing. However, her attorney appeared in court on that date, and thus must have had notice of the hearing. He also attended the June 7, 2004 hearing, at which time the court announced the July 27, 2004 date for the next hearing.

We conclude that petitioner had adequate notice of the August 13, 2004 hearing.

IV. DISPOSITION

The petition for writ of mandate is denied, and the order to show cause is discharged.

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_____, Acting P. J.

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We concur:

_____, J.

DOI TODD

_____, J.

ASHMANN-GERST